

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

APR 15 1996

In the Matter of)	
)	
Amendment of Part 20 and 24 of the)	
Commission's Rules -- Broadband PCS)	WT Docket No. 96-59
Competitive Bidding and the Commercial)	
Mobile Radio Service Spectrum Cap)	
)	
Amendment of the Commission's Cellular)	GN Docket No. 90-314
PCS Cross-Ownership Rule)	

DOCKET FILE COPY ORIGINAL

COMMENTS OF AIRLINK, L.L.C.

Shelley Spencer
AirLink, L.L.C.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
(202) 424-7798

April 15, 1996

Table of Contents

Summary	i
I. THE REPAIR LIST -- REPAIRS FOR THE F BLOCK AUCTION	2
A. Breakdown of the C Block Auction	2
B. The Repair List	3
1. Restricting Winnings -- A Population-Based Restriction of 27 Million Pops on Bidding Eligibility and License Acquisition Rather Than A License Cap Will Best Promote Diversity in Licensing, Competition and Innovation ..	4
2. Credit Worthiness -- Correlating the Upfront Payment with Bid Liability Rather than Eligibility for Pops	8
3. More on the Table -- 20% vs. 10% Down	10
4. Small No Longer -- The Value of C Block Licenses Should be Attributed to F Block Bidders	10
5. Installment Payments for D and E - More Opportunity, More Value	11
6. Level Up Preferences	12
II. THE "NO REPAIRS REQUIRED" LIST	13
1. Keep The Control Group Structure -- Certainty in Regulation	14
2. Tiered Bidding Discounts Make Sense	14
3. \$40 Million is Still Small	15
4. Maintain the Transfer Restrictions -- Deter Speculation and Collusion ..	16
III. PROCEDURAL ISSUES	17
IV. CONCLUSION	18
Exhibit A -- Statement of Professor Robert H. Gertner University of Chicago	20

Summary

The C block auction was the first vibrant test of the Commissions' rules for promoting small business participation in the auctioning and licensing of broadband PCS. The results and events of the auction provide important feedback on the effectiveness of the Commission's entrepreneur's block rules. An analysis of the C block auction reveals that the rules, while well intended, were not effective in producing the wide dissemination of licenses required by Section 309(j) of the Budget Act or envisioned by the Commission. The concentration of licenses in a few bidders is especially acute in the urban BTAs with populations in excess of 1 million. At the end of Round 90 of the C block auction:

- ◆ the top 4 bidders controlled more than 60% of the Pops
- ◆ the top 4 bidders were responsible for over 74% of the total high bids
- ◆ the single top bidder had a total liability (after discount) of over \$4 billion and controlled over 90 million Pops. By contrast, Wireless Co., the highest bidder in the A and B block auctions had an ending bid liability of \$2.1 Billion for 144 Million Pops.

Over 50% of the bidders in the C block auction withdrew from the auction. Significantly, AirLink, and four other of the top ten bidders who bid extensively in top tier markets -- Go, U.S. AirWaves, Telecorp, and PersonalConnect -- withdrew from the C block auction prior to its close. Each of these bidders submitted large upfront payments and was backed by a partner with telecommunications operational expertise.

Based on its experience in the C block auction and its hopes for small businesses in the F block auction, AirLink urges the Commission to adopt certain changes to its competitive bidding rules for the F block auction to ensure that small businesses have a realistic opportunity to participate in broadband PCS in this *last* entrepreneur's block auction and to bring entrepreneurial competition into the PCS marketplace. Using the adage if it "ain't broke don't fix it", AirLink offers the Commission its "repair list" of things that clearly were broken in the C block auction but fortunately can be repaired in the F block auction. AirLink also offers the Commission its list of things that "ain't broke and don't need fixin". These rules worked well in the C block auction and will continue to promote the creation and growth of small businesses in the F block auction.

The Repair list

AirLink offers the following six repairs to the Commission's rules for the F block auction:

- (1) **Restricting Winnings** -- A Population-Based Restriction of 27 Million Pops on Bidding Eligibility and License Acquisition Rather Than A License Cap Will Best Promote Diversity in Licensing, Competition and Innovation

(2) Credit Worthiness -- Tying the Upfront Payment to Maximum Bid Liability Rather than Eligibility is the Better Credit Test

(3) More on the Table -- 20% vs. 10% Down

(4) Small No Longer -- The Value of C Block Licenses Should be Attributed to F Block Bidders

(5) Installment Payments for D and E - More Opportunity, More Value

(6) "Level Up" Preferences

The "No Repairs Required" List

Based on AirLink's work in structuring a designated entity and raising capital, AirLink submits the following list of rules that should *NOT* be changed for the F block auction

(1) Keep The Control Group Structure -- Certainty in Regulation

(2) Tiered Bidding Discounts Make Sense

(3) \$40 Million is Still Small

(4) Maintain the Transfer Restrictions -- Deter Speculation and Collusion

AirLink encourages the Commission's to scrutinize the effectiveness of its competitive bidding rules in the C block auction and to use the experience gained from the C block auction to provide opportunity for a wide dissemination of licenses and robust competition. The injection of true entrepreneurial competition through the F block auction is the only way to fulfill the Commission's goal of providing competition and innovation in the offering of PCS. Without certain rule changes, however, strong entrepreneurs will shy away from the F block auction wary of a repeat of the C block auction.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

APR 15 1996

In the Matter of)	
)	
Amendment of Part 20 and 24 of the)	
Commission's Rules -- Broadband PCS)	WT Docket No. 96-59
Competitive Bidding and the Commercial)	
Mobile Radio Service Spectrum Cap)	
)	
Amendment of the Commission's Cellular)	GN Docket No. 90-314
PCS Cross-Ownership Rule)	

COMMENTS OF AIRLINK, L.L.C.

AirLink, L.L.C. ("AirLink"), hereby submits its comments regarding the Commission's Notice of Proposed Rulemaking ("Notice") in the above-captioned proceedings.¹ AirLink is a small businesses formed to bid in the broadband PCS entrepreneur's block auctions. AirLink's members are AirGate, a small business of experienced wireless entrepreneurs and the venture capital firm of Weiss, Peck & Greer, and BCIM, L.P., a partnership between BCE Mobile Communications Inc. and Bell Canada International Inc. BCE Mobile Communications Inc. is 65.4% owned by BCE Inc.

AirLink submitted an upfront payment of \$20 Million to participate in the C block auction placing AirLink among the top ten bidders in the auction measured by the size of their upfront payments. AirLink withdrew from the C block auction in Round 42 after its business and bidding

¹ AirLink's comments are limited to the proposals in the Notice for competitive bidding rules for the D, E and F block auctions. AirLink does not take a position, at this time, on the PCS-cellular cross ownership rule but reserves the right to take a position in the future.

models demonstrated that then current bid prices had exceeded the upper limits for a sustainable, profitable enterprise. Five of the top ten bidders, including AirLink, with upfront payments totaling approximately \$200 Million withdrew from the auction. Significantly, four of these companies: AirLink, Go, U.S. AirWaves, and PersonalConnect were backed by at least one experienced telecommunications company or entrepreneur including BCE Mobile, Century Telephone, AllTel, MCI, and Craig McCaw.

Using the adage if it “ain’t broke don’t fix it”, AirLink offers the Commission its “repair list” of things that clearly were broken in the C block auction but fortunately can be repaired in the F block auction. These rule changes, several of which are proposed in the Notice, will ensure that small businesses have a realistic opportunity to participate in broadband PCS in this *last* entrepreneur’s block auction and to bring entrepreneurial competition into the PCS marketplace. AirLink also offers the Commission its list of things that “ain’t broke and don’t need fixin”. These rules worked well in the C block auction and will continue to promote the creation and growth of small businesses in the F block auction.

I. THE REPAIR LIST -- REPAIRS FOR THE F BLOCK AUCTION

A. Breakdown of the C Block Auction

The C block auction was the first vibrant test of the Commission’s rules for promoting small business participation in the auction and licensing of broadband PCS. The results and events of the auction provide important feedback on the effectiveness of the Commission’s entrepreneur’s block rules. Following this auction, it is appropriate for the Commission to reassess its rules for the F block auction to determine if they can effectively meet the governing goals of Section 309(j) of the Communications Act:

promoting *economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses* and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women.²

Significantly, more than half of the initial bidders in the C block auction withdrew from the auction. Fifty percent of the top ten bidders measured by their upfront payments also withdrew from the auction. At least 5 of the top bidders that entered the auction as small businesses will emerge as large businesses which have amassed large licensed territories with values far in excess of \$500 Million and net license cost liabilities to match. Currently, bid prices in the C block auction are 2.5 times higher than the winning bid prices for the A and B block licenses³ even after accounting for the financial incentives provided to small businesses in the C block auction.⁴

B. The Repair List

The F block auction is the *last* opportunity for small businesses to acquire broadband PCS

² 47 U.S.C. § 309(j)(3)(B). In developing its regulations, the Commission is directed to prescribe area designations and bandwidth assignments that promote economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. 47 U.S.C. § 309(j)(4)(C).

³ This calculation does not discount the C block license further for geographical differences, transfer restrictions or unjust enrichment penalties.

⁴ The market valuations of the A and B block licenses have not changed significantly following the close of the auction as demonstrated by GTE's sale of its Denver and Atlanta MTA licenses. GTE acquired the Denver MTA license in the A and B block auctions for \$64.5 and sold the license to Western Wireless at this price. GTE acquired the Atlanta MTA license in the A and B block auctions for \$184 Million and sold it to InterCell Communications, Inc. for \$195 Million. These sale prices indicate that the market valuation placed on the licenses by the A and B block winners was fairly accurate and that a premium was not sustainable in the open market. These sale prices indicate that premium license prices in the C block auction may not reflect market value.

licenses. Therefore, the F block auction -- more than any other auction -- must produce the wide dissemination of licenses critical to robust competition and innovative PCS offerings. With the clear mandate of Section 309(j) of the Communications Act as the guide and experience from the A, B and C block auctions, AirLink offers the following six repairs to the Commission's rules for the F block auction:

(1) Restricting Winnings -- A Population-Based Restriction of 27 Million Pops on Bidding Eligibility and License Acquisition Rather Than A License Cap Will Best Promote Diversity in Licensing, Competition and Innovation

(2) Credit Worthiness -- Tying the Upfront Payment to Maximum Bid Liability Rather than Eligibility is the Better Credit Test

(3) More on the Table -- 20% vs. 10% Down

(4) Small No Longer -- The Value of C Block Licenses Should be Attributed to F Block Bidders

(5) Installment Payments for D and E - More Opportunity, More Value

(6) "Level Up" Preferences

1. Restricting Winnings -- A Population-Based Restriction of 27 Million Pops on Bidding Eligibility and License Acquisition Rather Than A License Cap Will Best Promote Diversity in Licensing, Competition and Innovation

The Commission has imposed a 10% license cap on the amount of licenses that any one bidder can win in the C & F block auctions to achieve Section 309(j)'s goal of disseminating licenses among a wide variety of applicants. This 10% license cap was developed when a consolidated C and F block auction was contemplated and imposes an aggregate cap of 98 licenses that any one bidder can purchase in the C & F block auctions. The goal of the license cap, as expressed by the Commission, was to strike a balance between the wide dissemination of licenses and the need for bidders to aggregate licenses to develop systems that can compete with

regional and incumbent competitive wireless systems.⁵

Contrary to its intention, the 10% license cap has been shown in the C block auction to be ineffective in promoting the wide dissemination of licenses especially in the top tier markets with significant population concentrations. In hindsight, the results of the C block auction demonstrate that the license cap did not strike the right balance. As the results from Round 90 of the C block auction demonstrate:

- ◆ In Round 90, the highest bidder, NextWave Telecom, Inc. ("NextWave"), was the high bidder on licenses in 51 markets with an aggregate population exceeding 90 million Pops. NextWave's total liability after Round 90 and the bidding discount was over \$ 4 Billion. By contrast, Wireless Co., the winner of the most licenses in the A and B block auctions, had an ending bid liability of only \$2.1 Billion for approximately 144 Million Pops.
- ◆ After Round 90, the top 4 bidders in the auction were responsible for over 74% of the total high bids.
- ◆ The top 4 bidders controlled over 60% of the Pops in the auction after Round 90.

Under the license cap, one bidder may acquire approximately 72% or 180,611,430 of the 252,556,719 available Pops in the C or F block auctions. This cap easily permits a single bidder to acquire every BTA with a population of 1 million or more. Of the 493 BTAs, there are only 52 BTAs with populations in excess of 1 million. In essence, the cap permits a bidder to dominate the top 98 markets to the exclusion of other well qualified bidders seeking to build competitive systems around highly populated areas. The elimination of other strong small businesses is contrary to the goals of 309(j) and inhibits the licensing of a diverse field of strong small businesses in favor of creation of one or two dominant large business. Broad distribution of Pops among multiple licensees will produce more competition and innovation.

⁵ Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd. 5532, 5606 (1994).

The Commission and Congress consistently have recognized that the goal of spectrum auctions should not merely be to attract the most revenue or maximize bid prices. Spectrum allocation and assignment must also be driven by the fundamental policy goals of promoting competition and innovative use of the spectrum and providing opportunities for new entrants. As Professor Robert H. Gertner of the University of Chicago who advised Wireless Co. and AirLink in the auctions explains in his attached statement, there is a correlation between the number of firms in an industry and innovation. *See Exhibit A.* According to Professor Gertner, innovation has been shown to flourish when there is competition between a large number of competitors in an industry. Accordingly, economic theory provides a sound basis for promoting a wide dissemination of licenses.

The balance in promoting a wide dissemination of licenses and providing bidders flexibility to aggregate markets is best struck through imposition of a population based cap of 27 million Pops in the F block rather than a license-based cap.⁶ A Pop-based restriction recognizes the importance of metropolitan areas to small businesses seeking to offer PCS in urban and regional areas and promotes the wide dissemination of licenses in these top tier markets. The 27 million Pop cap is appropriate because it will foster a wide dissemination of licenses including those in the top tiers. In addition, the 27 million Pop cap will permit companies to continue to acquire licenses in the largest metropolitan areas such as the New York City MTA which has a combined BTA population of 26.4 million and the Los Angeles MTA which has a combined BTA

⁶ The license-based cap should apply only to the F block thereby permitting companies eager to acquire additional Pops in excess of the cap to do so in the D and E blocks.

population of 19.1 million.⁷ A wide dissemination of licenses in these highly populated markets is just as essential as a wide dissemination of licenses throughout all 493 BTAs. The 98 license cap permits a single bidder to acquire licenses for all of the top 98 BTAs. By contrast, with a 27 million Pop cap, at least 6 bidders could acquire licenses with approximately the same number of POPs in the top 98 markets. Accordingly, AirLink recommends that the Commission provide an opportunity for diversity in licensing in the F block in the top tier markets by establishing a 27 million Pop cap on licenses that a single bidder is eligible to bid on and can acquire in the F block auction.

A population-based cap also will restrain bidders from playing the "eligibility game". This game, which was played repeatedly in the C block auction, involves a bidder bidding in markets it does not intend to win -- or even value -- solely to maintain eligibility or "park" Pops. As a direct result of bidders' desire to maintain eligibility, a number of markets in the C block auction were bid up by multiple bidders irrespective of value. An analysis of the slow loss of eligibility in the C block auction demonstrates that this game frequently was played in the C block auction. In addition, bidders lost a total of 1.443 billion in eligibility during the auction indicating that bidders acquired initial eligibility far in excess of their ultimate license goals.

A population-based restriction of 27 million pops in the F block auction would inhibit bidders from playing the "eligibility" game and prevent artificial escalation in license prices. However, the population-based restriction would not eliminate or restrict the ability of bidders to bid on different markets. This flexibility would continue to be provided in the stages of the

⁷ In addition to license costs, a bidder that acquires licenses to serve markets with 27 million Pops likely will face total build out and operational costs in excess of \$1 Billion.

auction through application of the activity rule.

2. Credit Worthiness -- Correlating the Upfront Payment with Bid Liability Rather than Eligibility for Pops

Under the current rules, the upfront payment submitted prior to the start of the auction determines a bidder's eligibility to bid for markets based on Pops. What the upfront payment does not establish is the credit worthiness of the bidder at any given bid price. The 45¢ per Pop required for the C block auction is deemed to measure equally the credit worthiness of a bidder for a high bid of \$10 per pop as well as \$100 per pop. This extension of credit regardless of total liability departs from the credit extension ratios used by other lenders and auctioneers.

The absence of a correlation between the upfront payment and bidding liability fuels irrational speculation as bidders bid unrestrained based on the hope and speculation that they will be able to raise additional money during and after the auction to make the required 10% down payment and to continue to fund the installment payments and network construction. At the end of Round 90 in the C block auction, the top bidder had net bids totaling over \$4 Billion while its upfront payment was \$79 Million, less than 1.95% of its total liability. The second highest bidder as of the end of Round 90 had high net bids totaling \$1.4 Billion based on an upfront payment of \$40 Million or 2.83% of its total liability. In the context of the C block auction, the highest two bidders will be required to submit down payments of over \$400 Million and \$140 Million respectively. The annual interest expense alone will be \$203 Million and \$72 Million for each of these bidders for the first six years. The annual combined interest and principal payments for these bidders in years seven through ten will be \$1.03 Billion and \$368 Million. That these amounts will be paid by "small businesses", with no beginning assets other than the licenses is

astonishing, exceeds all reasonably accepted credit ratios, and poses a significant credit risk for the FCC.

It is appropriate to impose a credit test such as the maximum liability bidding cap in the C and F block auctions because the government is extending the bidders credit through installment payments. Just as other lending institutions such as mortgage companies, credit card companies and banks limit a borrower's maximum exposure, the FCC too should limit its exposure to unrestricted bid liability by capping total bid liability as a factor of the upfront payment. Unlike the A & B block auctions, in the C and F block auctions, the FCC will not be able to quickly identify bidder defaults at the time of license award and quickly reauction the licenses. In the entrepreneur's blocks, financial defaults may occur at any point in the license term (at the time of down payment or during the license term when installment payments are due) making it appropriate for the FCC to impose a more stringent credit test on bidders prior to and during an entrepreneur's block auction.

The FCC should impose a test of credit worthiness to prevent speculation by:

- ◆ requiring a minimum upfront payment of \$0.02 MHz per Pop without restricting the size of the upfront payment; and
- ◆ permitting bidders to have a bid exposure no greater than 10 times their upfront payment.

Under this structure a bidder wishing to assume a total bid liability of \$500 Million would be required to submit an upfront payment of \$50 Million. Of course bidders should be permitted to exceed the minimum required upfront payment of \$0.02 MHz per Pop if they would like to undertake bidding liability in excess of that permitted by the minimum upfront payment.

3. More on the Table -- 20% vs. 10% Down

Elimination of the discounted down payment is another valid means of imposing a credit test and deterring bidder speculation. By requiring bidders to place more money on the table soon after the auction, bidders will be forced to realistically calculate and gauge their ability to raise capital. To preserve the opportunities for small business to attract strong financial partners and to receive credit for their role as the control group, the "value of the financing" must be maintained by offsetting the increased down payment with a discount on the Treasury bill rate charged small businesses. In financial arrangements, small business often are given credit for the government financing. Elimination of the value of the discounted down payment without an offset could significantly reduce the credit given to small businesses and reduce their ability to attract capital. The adjustment, of requiring a larger upfront payment and providing a slightly discounted interest rate, while producing a different schedule of payments can be structured to result in the same overall payments to the government.

4. Small No Longer -- The Value of C Block Licenses Should be Attributed to F Block Bidders

The Commission should consider the value of C block licenses in determining the eligibility of bidders in the F block auction. As Professor Robert H. Gertner documents in his attached statement, through the auction, several bidders in the C block auction have catapulted themselves from small companies to companies with valuations that surpass companies in the Fortune 500. For example, as of Round 90, NextWave has placed net high bids totaling over \$4 billion for 51 licenses.⁸ The license assets of this "start-up" company places NextWave in the

⁸ In addition to its license acquisition costs, NextWave can be expected to face build out and operational costs in excess of \$1.4 Billion.

midst of other established telecommunications companies in the Fortune 500 including AllTel and Comcast which have asset valuations of \$5.1 Billion and \$ 9.6 Billion respectively. In order to meet its down payment obligations, NextWave will have to pay over \$400 Million to the FCC. The ability to acquire licenses at this magnitude and valuation and to make a \$400 Million down payment demonstrates that NextWave has grown from a small to large business during the auction. The top bidders in the C block auction, through their bidding, have demonstrated their belief that they can raise capital and that they have outgrown the entrepreneur's block.

Of the 255 initial C block bidders, only five C block bidders have acquired licenses with a market value (established by the auction) of \$500 Million or more. Accordingly, the inclusion of the value of the licenses as an asset of those bidders would not impose undue harm on C block license winners. In addition, companies that exceed the asset limitation due to the inclusion of the value of their C block license would be eligible to bid for 10 MHz licenses in the D and E block auctions. The simultaneous availability of substitutable licenses through these auctions provides an ample way for these bidder to augment their existing license holdings.

5. Installment Payments for D and E - More Opportunity, More Value

The installment payments provided to small businesses in the F block auction should be extended to small businesses participating in the D and E block auctions. As recognized by the Commission in the Notice, the availability of installment payments will further competition in the bands and provide additional opportunities for small businesses.⁹ In addition, the potential to aggregate licenses in the D, E and F blocks could enhance their value to small business bidders whose financial structure may rely on the government financing provided through installment

⁹ See Notice at ¶ 54.

payments. Bidders may seek to combine two ten megahertz licenses to serve certain markets. In addition, bidders may seek to purchase licenses in all three blocks in different markets to develop a regional footprint. If the only remaining chance for small businesses to acquire a PCS license is the F block, many bidders may not be able to amass the licenses necessary to serve regional markets. The flexibility to bid for three different licenses with installment payments will increase the ability of small businesses to compete with incumbent providers by purchasing the necessary licenses to develop regional networks.

AirLink encourages the Commission to provide the same installment payments for small businesses in the D and E block auctions as in the F block. A discrepancy in installment payments would require a small business to develop different financial, accounting and legal structures to address the different terms of each license. In addition, the value of installment payments is particularly important to provide small businesses any viable opportunity to participate in the D and E block auctions where all bidders will be eligible to participate regardless of size. Accordingly, AirLink encourages the Commission to extend installment payments to small business bidders in the D and E block auctions on the same terms as the F block.

6. Level Up Preferences

As recognized by the Commission in the Notice, time is of the essence for the F block auction. AirLink commends Chairman Hundt for announcing that the F block auction will start in July, 1996. This timetable will ensure that designated entities do not lose a valuable opportunity to acquire the last PCS license to be auctioned in the entrepreneur's block. To compete effectively with the other PCS licensees, F block bidders must be able to get to market quickly. As A and B block licensees continue to launch their PCS networks in 1996, every day of delay in

the auction will cost F block licensees money and possibly marketshare. In the race to provide wireless services, time is a direct competitive advantage.

In addition to speed to auction, regulatory certainty also is important. Accordingly, to avoid the repeated delays in the C block auction due to litigation, AirLink recommends that the Commission follow the path it chose for the C block auction that was recently approved by the D.C. Circuit¹⁰ and "level up" the preferences for small businesses to the level for small minority and women-owned companies. This leveling of preferences will enable the Commission and bidders to avoid legal challenges that could delay the auction or place the validity of the licenses in question post-auction. Auction and licensing delays, whether imposed by the Commission or a court, will reduce the value of the F block licenses and reduce the opportunity for entrepreneurs.

II. THE "NO REPAIRS REQUIRED" LIST

The FCC's rules for the C block auction produced over 255 initial bidders due in large part to the specificity and certainty the rules provided to both small businesses and investors. Changes to the fundamental rules of the entrepreneur's block will reintroduce a level of regulatory and legal uncertainty that will hamper investment in potential F block bidders. In addition, any adjustments to the rules based on a perceived "lesser" value of the F block license would be premature. As bidding in the C block demonstrates, license valuation is complex and subjective. Early pronouncements by consultants of \$10 average bid prices in the C block auction were quickly surpassed. In addition, average C block bidding continues to exceed the winning bids in the A and B blocks even after accounting for financial incentives provided by the FCC.

Based on AirLink's work in structuring a designated entity and raising capital, AirLink

¹⁰ *Omnipoint Corp. v. FCC*, No. 95-1374, slip op. (D.C. Cir. March 8, 1996).

submits the following list of rules that should *NOT* be changed for the F block auction

- (1) Keep The Control Group Structure -- Certainty in Regulation**
- (2) Tiered Bidding Discounts Make Sense**
- (3) \$40 Million is Still Small**
- (4) Maintain the Transfer Restrictions -- Deter Speculation and Collusion**

1. Keep The Control Group Structure -- Certainty in Regulation

The control group structure is now a structure familiar to the investment community and industry. The certainty and specificity of the control group rules provide a road map for investors and entrepreneurs to follow as they structure their bidding entities. This level of specificity rather than a more general standard of "controlling principal" provides the regulatory guidance needed to raise money and promote investment in entrepreneurs eager to bid in the F block auction. A more undefined or ambiguous standard for determining the size and control of a bidding entity would produce a level of legal and regulatory uncertainty that could deter investors and reduce the number of bidders in the auction. Accordingly, AirLink recommends that the Commission retain the control group structure for the F block auction and that it extend the option of using either the 50.1/49.9% or 25% structure to all small businesses.

2. Tiered Bidding Discounts Make Sense

The tiered bidding discounts used in the C block auction provide a valid and reasonable means of providing incentives for different levels of small businesses to participate in the entrepreneur's block auctions. With the exception of extending the 25% discount to all small businesses, the discounts should not be modified for the F block auction. The bidding discounts used in the C block auction recognize the differing capital resources of control groups to

contribute to the bid prices and to operational costs of the bidding entity. Small companies, by definition, lack the financial resources to contribute heavily to the bidding or to provide ongoing capital to the licensed companies. For this reason, bidding discounts are essential.

In the Notice, the Commission seeks comment on whether the discount should be reduced for the F block auction based on a perceived "lesser" value of the F block license. This perceived lesser value, however, is speculative. The F block auction is the last entrepreneur's block auction for small businesses. Scarcity alone may boost the value of the F block license. In addition, companies not permitted to bid in the C block auction may partner with small businesses to bid in the F block -- a new source of financial investment -- and if they are cellular companies or existing PCS licensees -- they will bring additional strategic value to the license. Finally, the costs required to build out a 10 MHZ PCS network could exceed the network construction costs of a 30 MHZ license thereby making the discount to the license cost even more essential to an F block license winner. This is due to the need to deploy a network in the F block capable of providing competitive service to the other PCS licensees with 20 MHZ less of spectrum. For these three reasons alone, and there may be many more shown in the auction, the Commission should not reduce or alter the structure of the bidding discounts used in the C block auction for the F block auction and should extend the 25% bidding discount to all small businesses regardless of gender or race.

3. \$40 Million is Still Small

The Commission's tentatively concludes in the Notice that the measure of a small business should remain at \$40 Million in gross revenues and \$500 Million in assets. These continue to be the appropriate thresholds in assessing the size of bidders for the F block auction. These

thresholds produced over 254 small business bidders for the C block auction. As the rules intended, a number of the bidders were start up companies such as U.S. AirWaves, Go, DCR and AirLink. Rural telephone companies, such as Georgia Independent, also were able to participate as small businesses. In addition, many bidders who participated in the C block auction may participate in the F block auction. A change in the revenue or asset threshold at this time could disrupt their opportunity to participate in the F block auction. However, in assessing the eligibility of bidders for the F block, the Commission should consider the asset value of the C block licenses acquired by small businesses. As discussed above, by virtue of their bidding and license acquisition, at least 5 bidders in the C block auction no longer qualify as small businesses and should not be eligible for the F block auction or installment payments in the D and E blocks. Tremendous opportunity exists for these now large companies to partner with small businesses to participate in the F block or to participate independently in the D and E blocks.

4. Maintain the Transfer Restrictions -- Deter Speculation and Collusion

The Commission's proposal to alter the transfer restrictions to permit an entrepreneur to transfer a license during the first three years to another entrepreneur will fuel speculation and possibly collusion regarding bid prices in the F block auction. Transfer restrictions are essential during the early license years to deter speculation by bidders that they will be able to purchase licenses and resell them for a premium. The FCC's rules for the entrepreneur's blocks should continue to encourage bidding by companies interested in building and operating PCS networks not financial speculators. The need for transfer restrictions is particularly important for the F block auction where opportunistic bidders may speculate that, in this last entrepreneur's block auction, they can resell the license to neighboring licensed entities that will establish designated

entities or bid up prices to force a settlement. The possibility of collusion also is increased as bidders may indirectly or directly attempt to signal other bidders regarding willingness to transfer licenses post-auction. Accordingly, AirLink urges the Commission to retain its current transfer restrictions for the F block auction.

III. PROCEDURAL ISSUES

AirLink commends the Commission for its commitment to move forward with the D, E and F block auctions quickly and simultaneously. The simultaneous auction of the D, E and F blocks will provide bidders with the opportunity to aggregate licenses and develop valuations based on consolidated strategies. AirLink endorses the Commission's proposal to hold the D, E and F block auctions simultaneously and supports the separation of the F block for ease of administration.

AirLink also endorses the Commission's proposals to eliminate reporting requirements from its rules that have been demonstrated not to provide useful information and are burdensome to bidders. Specifically, AirLink supports the Commission's proposals:

- ◆ to only require the disclosure of outside ownerships interests in PMRS and CMRS providers;
- ◆ to eliminate the need to file a signed partnership form; and
- ◆ to permit the filing of unaudited financial statements.

These proposals are appropriate and will not eliminate relevant bidder information.

AirLink also encourages the Commission to establish a fail safe approach to protect confidential information submitted to the Commission. In the C block auction information filed electronically as confidential exhibits was not protected. This information which often contains

sensitive and proprietary bidder information must be protected. AirLink requests that the Commission permit confidential information to be filed separately either on paper or in a separate electronic filing accessible only by the FCC and the bidder to prevent inadvertent release of confidential information.

AirLink continues to believe that ownership information currently required to be included in the short form application is important to all bidders and should continue to be required by the Commission. An *ad hoc* approach to requesting ownership documentation during or after the auction would inhibit the free flow of information and access by the public and also could result in the inadvertent participation of unqualified bidders in the auction. Accordingly, AirLink urges the Commission to retain the ownership reporting requirements of its short form application with the three exceptions outlined above.

IV. CONCLUSION

AirLink commends the Commission for proposing to move quickly to the F block auction and to hold the auction concurrently with the auction of the D and E block licenses. In structuring the last entrepreneur's block auction for broadband PCS, the Commission should use the experience it has gained from the C block auction to strengthen its rules to promote opportunities for small businesses to participate in PCS. AirLink encourages the Commission to adopt the following rule changes:

- ◆ Adopt a population-based eligibility and license restriction of 27 million Pops
- ◆ Tie the upfront payment to maximum bid liability rather than eligibility to ensure the credit worthiness of bidders
- ◆ Require 20% down but provide a discount on the Treasury Note rate to small businesses

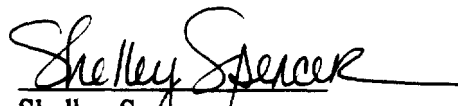
- ◆ Include the value of C block licenses in determining F block eligibility
- ◆ Extend installment payments for small businesses to D and E
- ◆ Level up preferences for all small businesses
- ◆ Limit the disclosure of outside ownership interests of attributable investors to PMRS and CMRS interests
- ◆ Eliminate the partnership agreement filing requirement
- ◆ Permit the use of unaudited financial statements

AirLink also cautions the Commission not to attempt to repair rules that worked well in the C block auction and were largely responsible for the large number of initial bidders. The rules not in need of repair include:

- ◆ The certainty in regulation provided by the control group rules
- ◆ The \$40 Million threshold for small businesses
- ◆ Tiered bidding discounts of up to 25%
- ◆ Three year transfer restrictions to deter speculation and collusion

AirLink looks forward to participating in the F block auction.

Respectfully submitted,


 Shelley Spencer
 AirLink, L.L.C.
 3000 K Street, N.W.
 Suite 300
 Washington, D.C. 20007
 (202) 424-7798

Date: April 15, 1996

EXHIBIT A

Statement of Professor Robert H. Gertner

University of Chicago

DESIGN ISSUES IN THE F-BLOCK PCS AUCTION

Robert H. Gertner

The University of Chicago

April 15, 1996

INTRODUCTION

I have been asked by AirLink L.L.C. to analyze the proposed license restrictions and payment plans for the F block auction in light of the stated goals of the preferences and the experiences of the A, B, and C block auctions. I focus on how to best structure the aggregate ownership restrictions and payment schedules in order to promote widespread license ownership and avoid inefficient defaults or speculative bidding.

I reach two basic conclusions:

- A restriction on the aggregate number of pops will be more effective than a restriction on the aggregate number of licenses in promoting a wide dispersion of license ownership.
- The F.C.C. should consider the use of greater upfront payments or deposits to reduce the risk of bidding with speculative financing or with the intention to not build out the network. The value of advantageous financing can be maintained by lowering interest rates or extending the duration of later payments.

I. POP RESTRICTIONS ARE BETTER THAN LICENSE RESTRICTIONS

Among the goals of the legislation which mandated spectrum auctions were "ensuring that new and innovative technologies are readily accessible to the American people by